

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 521/2004

Date of Decision: 01.2004

R.A. Dhumal. Applicants

Shri R.D. Deharia. Advocate for applicant

Versus

Union of India & Ors. Respondents

Shri V.D. Vadhavkar Advocate for respondents

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

1. To be referred to the reporter or not? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal? *no*
3. Library. *yes*


(MUZAFFAR HUSAIN)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.521/2000

THIS THE 8TH DAY OF JANUARY, 2004

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

Shri Rajendra Anandrao Dhumal,
Age 35 years, Occ- unemployed,
R/o Flat No.A-3, Ground Floor,
Shri Mayur Co-op Hsg. Soc. Ltd.
Nenewadi, Waldhuni, Kalyan,
Kalyan. Dist- Thane.
Pin - 421 301.

.. Applicant

By Advocate R.D. Daheria

Versus

1. Union of India through
The General Manager,
Western Railway,
Churchgate, Mumbai.
Pin-400 020.

2. The Chief Personnel Officer,
Western Railway,
Churchgate,
Mumbai-400 020.

.. Respondents

By Advocate Shri V.D. Vadhavkar.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant being aggrieved by the impugned order dated 22/30.7.1991 and 04.4.2001 of the respondents has prayed for quashing the order dated 04.4.2001 (annexure A1) declaring the applicant unfit for the recruitment to the Group-C services for which he was selected after completing the selection proceedings.

2. The facts stated by the applicant are that the applicant had submitted his application for recruitment



...2.

as Diesel Assistant i.e. Category-I pursuant to Employment Notice No.2/88-89 issued by the Railway Recruitment Board, Ahmedabad. He was declared successful and his name was recommended for appointment as diesel Assistant. The Divisional Mechanical Engineer (Loco) Establishment, Western Railway, Vadodara offered the applicant appointment subject to the condition stipulated in the letter dated 16.5.1991 and the applicant was directed to report to the Divisional Railway Manager, Western Railway, Vadodara at once to receive a bearer letter to the Medical Superintendent, Vadodara for medical examination in class A-I without fail. Accordingly, the applicant presented himself before the Medical Superintendent, Vadodara with the letter from Divisional Railway Manager, Vadodara for medical examination on 01.6.1991 at Pratap Nagar Railway Hospital, Vadodara, Western Railway. Since he could not meet the requirement of classification A-I, he was not appointed to the category to which he was selected. In terms of Railway Board order No. E(NG)162/RC/1-95 dated 26.10.1962 those who failed in the particular category of medical classification after selection can be considered for alternative employment to which he satisfies the medical classification. The respondents failed and neglected to carry out and implement this order in regard to the applicant and inflicted great injustice on him. the applicant was quite unaware of the rules of the Railways. His father made several



representation to the respondents for doing justice, but all in vain. The respondents are not interpreting the direction contained in Board letter dated 26.10.1962 correctly, it has done serious damage to the future of the applicant. It is also painful to note that the reply of the respondents is vague when they wrongly state that there is no provision for giving alternative employment to general candidates. They have failed to examine the case with reference to the respective rules, as is evident from the fact that they have not quoted any rules in support of their contentions. The applicant being general candidate was selected for technical category as Diesel Assistant and since he was declared medically unfit for A-I classification, he was entitled and eligible to the alternative appointment as Artisan Fitter being technical category as he was/is qualified for this trade as he has passed N.C.T.V.T. examination in Trade Fitter in April, 1988. The Railway Board vide letter No. 99/E(RRB) 25/12 dated 20.8.99 and dated 07.8.2000 further clarified the position. In the letter dated 20.8.99 it is clearly mentioned that at present General Managers are authorised to consider the requests from the candidates empanelled by the RRB but failing in prescribed medical examination for appointment in alternative technical categories. This clarification given by the Board is with reference to their earlier letter dated 26.10.1962. The applicant submitted a representation dated 17.10.2000 and



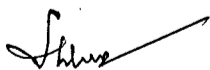
subsequently 10.02.2001 which was replied by the respondents on 04.4.2001 (Annexure A1), challenging the said order dated 04.4.2001 the applicant has approached this Tribunal under Section 19 of the AT Act.

3. The respondents have opposed this OA by filing written reply wherein it has been stated that the application is belated by about 10 years, as the cause of action, if any, arose on 22/30.7.2001. The applicant was selected as Apprentice Diesel Assistant pursuant to the notification dated 07.10.1988. He could not meet with the requisite medical standard in the medical examination conducted on 01.6.1991. The applicant is aged over 35 years and hence in matter of direct recruitment delay in approaching this Tribunal is considerable and the applicant is very much over aged. It has also been submitted that the Railway Board vide their letter No. 96/E (RRB) 12/4 dated 25.10.1996 advising the General Manager, Norther Railway to deal with the case of one Shri V.R. Dubey as per instructions contained in their letter No. E(NG)62RC1/95 dated 26.10.1962 addressed to the General manager sending a copy thereof for ready reference. Till then the General manager Western Railway had not received Railway Board circular dated 26.10.1962. As per Railway Board letter dated 26.10.1962 if a candidate selected for technical category fails in the prescribed medical examination, he may be considered for an



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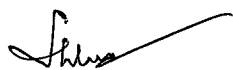
alternative technical category provided he possess the requisite qualification and there is shortage in that category subject to his being medically fit for that category. The direction contained in the said letter dated 26.10.1962 only confer a discretion and does not create a vested right in the candidate medically unfitted for the category he is selected and his appointment in alternative category depends on the fulfilment of prescribed conditions and above all a specific circumstance of shortage in that category in which he could have been absorbed. The applicant in para 2 of his representation dated 10.02.2001 quoted alternative category as clerk / Ticket collector etc. These are non-technical categories, whereas the Railway Board said letter on which the applicant is basing his claim clearly stipulates that such consideration has to be for alternative technical category. Even for SC/ST candidates, for whom the rules are generally liberal as compared to candidates belonging to general communities, restriction is laid down in Railway Board's letter dated 07.11.1985 to the effect that the alternative appointment can be offered only in those categories for which a common examination is held and that too based on position in combined merit list. The applicant is a Fitter and direct recruitment to fitter is limited to 25% which is through recruitment of skilled artisan. Railway Board letter dated 20.8.99 clearly said in para 2 that among other the General manager shall henceforth



have the authority to consider the requests from candidates of non-technical categories also. The word henceforth clearly implies that the letter will have only prospective effect. Representation of the applicant dated 17.10.2000 referred to the Railway Board dated 07.8.2000 wherein the Railway Board have widened the scope of alternative appointment. The letter is prospective and cannot be applied to past cases. The applicant has thus, failed to make any legal ground for securing relief. The case is barred by delay and latches and is not meritorious one. For the reasons mentioned above, the applicant is not entitled to any of the relief on ground of delay and latches, also devoid of merit. The respondents claim that the OA be dismissed.

4. We have heard the learned counsel for the parties and gone through the records.

5. Learned counsel for the respondents had contended that the OA is heavily time barred being filed after 10 years as any cause of action arose on 30.7.1991. Learned counsel for the applicant has contended that the Railway rules provided that if any candidate found unfit in category and fit for other category as per medical certificate then he is given an alternative appointment. This rule is applicable to both the SC/ST and general categories. The applicant



...7.

was selected for category of Diesel Assistant and was found medically unfit for Diesel Assistant, then he has to be given an alternative appointment in the lower category, which is lower in medical class. In this case, even though the applicant was eligible for alternative appointment as per medical certificate and technical qualification, he was not given the same. On the contrary the respondents were giving round about answers based on wrong circulars issued by the Railway Board. Even though the applicant belongs to the general community he was being answered that this provision is applicable to reserved candidates and not for general candidates. During the pendency of the case, the applicant was informed that this provision also applicable to general candidates and he got the circular on which the case of the applicant is based. It has been procured by the applicant as an important piece of evidence which was denied to him by the respondents, who were the custodian of the Railway Board's circular. From this it will be seen that the delay has been caused by the respondent in not giving proper reply based on the proper circular. It has also been contended that the respondents have given the full details in the letter dated 04.4.2001 quoting the circular in respect of provision for alternative employment. Therefore, the application is well within the time. We have considered the submissions made by the learned counsel for the parties and after going through the papers, we are of

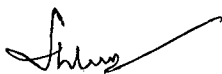


...8.

the view that non providing the alternative employment to the applicant according to the medical requirement, is continuous, cause of action and applicant could know the rule on the subject by letter dated 04.4.2001 of the respondents. Therefore, the applicant is well within the time and if there is any delay, it has to be condoned and the delay is accordingly condoned.

6. Learned counsel for the applicant has contended that the respondents are either unaware or pretending ignorance of the Railway Board letter No. E(NG)62RC1/95 dated 26.10.1962 which authorises the General Manager to consider the request of the nature as in case of the applicant. According to the said order the applicant has to be considered for alternative employment. Learned counsel for the respondents contended that the applicant has no vested right and he has no continuous cause of action and even according to the Railway Board letter dated 26.10.1962 only confers discretion and does not create a vested right in the candidate who has become medically unfit for prescribed category.

7. It has been admitted in the written statement that the Railway Board vide their letter dated ²⁵~~20~~.10.1996 advising General Manager, Northern Railway to deal with such cases as per instructions contained in their letter dated 26.10.1962. The letter of the




Railway Board is annexed as Annexure R1 along with the Railway Board letter dated 26.10.1962. It goes to show that the Railway Board has directed the General Manager, Northern Railway to deal with the case of one Shri V.R. Dubey for alternative appointment in a technical category in terms of instructions contained in the Railway Board letter dated 26.10.1962. Therefore, the applicant also entitled to the parity of treatment by the respondents. In letter dated 20.8.99 (Annexure A10) it is clearly mentioned that

"the General Managers shall henceforth have the authority to consider requests from candidates of non-technical categories also, who fail in prescribed medical examination after empanelment by RRB for their appointment in alternative category subject to fulfilment of the prescribed medical standard, educational requirement and other eligibility criteria for the same grade post in alternative category".

Similarly para 2 of the letter dated 07.8.2000 (Annexure A11) reads as under:

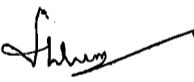
"It is reiterated that these instructions will apply to all candidates both from reserved as well as non-reserved communities and for all categories of recruitment to Group C & D posts subject to restrictions for Group D categories mentioned in para 1 above, and other conditions mentioned in Board's letter of even number dated 20.8.99."


In both the letters, the Board's letter dated 26.10.1962 has been referred. Cumulative effect of both the letters is that the instructions contained in Railway



Board letter dated 26.10.1962 are inexistence as the said letter has not been bye-passed or over-ruled by any of the subsequent letter, therefore, applicant's case must have been considered for the alternative category by the respondents, which they have failed to do.

8. Considering the facts and circumstances of the case, we are of the opinion and it is expedient in the interest of justice that liberty be given to the applicant to make representation before General Manager, Western Railway for providing alternative appointment in view of the Railway Board letter dated 26.10.1962 (Annexure A9). If such an application is filed by the applicant and the applicant is found medically fit for alternative category, the General Manager, Western Railway shall consider and decide the case of the applicant by reasoned speaking order within three months from the date the copy of the order is filed before him. With this observation, the OA stands disposed of. No order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(ANAND KUMAR BHATT)
MEMBER (A)

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